

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

ECF Case

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ROBERTO ESPINO BARROS and  
FRANCISCO GASPAR, *individually and on  
behalf of others similarly situated,*

**ANSWER BY WAN CHI CORP.  
AND WAYNE HON**

08-CV-3461 (LTS)

Plaintiffs,

-against-

WAN CHI CORP. (d/b/a as CHARLIE MOM  
CHINESE CUISINE and CHARLIE MOM  
RESTAURANT), AND WAYNE HON,

*Defendants.*

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Defendants Wan Chi Corp. and Wayne Hon, by their attorneys, Sapir & Frumkin, LLP, without waiving objections to plaintiffs' failure to comply with Fed. R. Civ. P. Rules 8 and 10, denies each allegation that alleges or tends to allege that actions taken by the defendants have been contrary to constitutional, statutory, regulatory or case law and answers the Complaint as follows:

1. Paragraph 1; denies.
2. Paragraph 2; denies.
3. Paragraph 3; denies.
4. Paragraph 4; denies.
5. Paragraph 5; plaintiffs set forth a summary of this action which does not require an admission, denial or other response.
6. Paragraph 6; plaintiffs set forth a summary of this action which does not require an admission, denial or other response.
7. Paragraph 7; denies.

8. Paragraph 8; denies.

9. Paragraph 9; denies knowledge or information with which to respond.

10. Paragraph 10; denies except admits that, upon information and belief, plaintiff Espino Barros was employed by defendant Wan Chi Corp. through August 16, 2007 and denies knowledge or information with which to respond to plaintiff's statement regarding the start date of said employment.

11. Paragraph 11; denies.

12. Paragraph 12; denies.

13. Paragraph 13; denies.

14. Paragraph 14; admits.

15. Paragraph 15; denies.

16. Paragraph 16; denies knowledge or information with which to respond.

17. Paragraph 17; denies except admits that, upon information and belief, plaintiff Gaspar was employed by defendant Wan Chi Corp. through August 17, 2007 and denies knowledge or information with which to respond to plaintiff's statement regarding the start date of said employment.

18. Paragraph 18; denies.

19. Paragraph 19; denies.

20. Paragraph 20; admits.

21. Paragraph 21; denies.

22. Paragraph 22; denies except admits that defendant Wan Chi Corp. ("Wan Chi") is a corporation organized and existing under the laws of the State of New York.

23. Paragraph 23; denies except admits that defendant Wayne Hon resides at 47-37 Parsons Blvd., Flushing, New York 11355.

24. Paragraph 24; denies.

25. Paragraph 25; denies.

26. Paragraph 26; denies.

27. Paragraph 27; denies except denies knowledge and information with which to address plaintiffs' legal conclusion regarding the interpretation of "employers" under the FLSA and New York Labor Law.

28. Paragraph 28; denies.

29. Paragraph 29; denies.

30. Paragraph 30; denies.

31. Paragraph 31; denies.

32. Paragraph 32; denies.

33. Paragraph 33; denies.

34. Paragraph 34; denies.

35. Paragraph 35; denies.

36. Paragraph 36; plaintiff sets forth a summary of this action which does not require an admission, denial or other response.

37. Paragraph 37; denies.

38. Paragraph 38; repeats and reasserts prior responses.

39. Paragraph 39; denies.

40. Paragraph 40; denies.

41. Paragraph 41; denies.
42. Paragraph 42; denies.
43. Paragraph 43; denies.
44. Paragraph 44; denies.
45. Paragraph 45; repeats and reasserts prior responses.
46. Paragraph 46; denies.
47. Paragraph 47; denies.
48. Paragraph 48; denies.
49. Paragraph 49; repeats and reasserts prior responses.
50. Paragraph 50; denies.
51. Paragraph 51; denies.
52. Paragraph 52; denies.
53. Paragraph 53; denies.
54. Paragraph 54; repeats and reasserts prior responses.
55. Paragraph 55; denies.
56. Paragraph 56; denies.
57. Paragraph 57; denies.
58. Paragraph 58; denies.
59. Paragraph 59; repeats and reasserts prior responses.
60. Paragraph 60; denies.
61. Paragraph 61; denies.
62. Paragraph 62; denies.

63. “Wherefore” paragraphs; denies that plaintiffs have presented causes of action upon which relief may be granted.

**DEFENSES**

**AS AND FOR A FIRST DEFENSE**

64. The claims are barred by applicable statutes of limitations.

**AS AND FOR A SECOND DEFENSE**

65. The claims are barred by the doctrine of laches.

**AS AND FOR A THIRD DEFENSE**

66. Defendant acted with reasonable care to ensure its actions were in compliance with all applicable laws and regulations.

**AS AND FOR A FOURTH DEFENSE**

67. The claims are barred to the extent that Plaintiffs are estopped by their own conduct from claiming any damages or relief against Defendants.

**AS AND FOR A FIFTH DEFENSE**

68. To the extent Plaintiffs have sustained damages as alleged in their complaint, Plaintiffs have misstated their damages.

**AS AND FOR A SIXTH DEFENSE**

69. Defendant Wayne Hon was not the employer of any Plaintiffs or putative class members.

**AS AND FOR A SEVENTH DEFENSE**

70. Defendant Wan Chi Corp. was not the employer of any Plaintiffs or putative class members.

**AS AND FOR A EIGHTH DEFENSE**

71. Plaintiffs were not engaged in interstate commerce during their employment.

**AS AND FOR A NINTH DEFENSE**

72. Defendants do not constitute an enterprise within the meaning of the Fair Labor Standards Act.

**AS AND FOR A TENTH DEFENSE**

73. This action fails to meet the requirements for class certification.

**AS AND FOR A ELEVENTH DEFENSE**

74. Plaintiffs have failed to satisfy statutory or other prerequisites to proceed collectively or as a class action.

**AS AND FOR A TWELFTH DEFENSE**

75. Plaintiffs are not adequate representatives of the putative class members.

**AS AND FOR A THIRTEENTH DEFENSE**

76. This action is not appropriate for class certification because the class fails to meet the numerosity requirement and because facts and law common to the case, if any, are insignificant compared to the individual facts and issues particular to Plaintiffs and to the putative class members.

**AS AND FOR A FOURTEENTH DEFENSE**

77. Plaintiffs cannot establish and maintain a class action because they cannot demonstrate that a class action is superior to other methods available for adjudicating the controversy.

**AS AND FOR A FIFTEENTH DEFENSE**

78. Plaintiffs cannot establish and maintain a class action to any extent that this Court is not a proper venue for claims of the purported unidentified additional plaintiffs.

**AFFIRMATIVE DEFENSES**

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

79. The Complaint fails to state a claim upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

80. This Court lacks personal jurisdiction over Defendants.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

81. This Court lacks subject matter jurisdiction over Defendants.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

82. This venue is the improper venue for stated claims.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

83. The Plaintiffs failed to properly effectuate service of process upon Defendants.

WHEREFORE, Defendants respectfully request that this Court dismiss the Complaint, deny the relief requested, and grant such other relief as the Court deems just and reasonable.

Dated: White Plains, New York  
July 7, 2008

Yours, etc.,

**SAPIR & FRUMKIN LLP**

By: /s/ John C. O'Dea  
John C. O'Dea (JO 0579)  
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To: Michael Faillace, Esq.  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 7, 2008, a copy of the ANSWER BY WAN CHI CORP. AND WAYNE HON was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt including:

Michael Faillace, Esq.  
Michael Faillace & Associates, P.C.  
*Attorneys for Plaintiffs*  
110 East 59<sup>th</sup> Street, 32<sup>nd</sup> Floor  
New York, NY 10022

Parties may access this filing through the Court's electronic filing system

/s/ Rachel L. Horton  
Rachel L. Horton